

February 21, 2006

Mr. Jay Manning, Director
WA State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Dear Jay:

Megan White and her colleagues have prepared agency comments (due today and enclosed) on the preliminary draft of the NPDES stormwater permit for WSDOT.

Megan has also urged that I share with you directly some key concerns that we hope will lead to a personal discussion in the near future. Some of these issues may already have the attention of Department of Ecology staff, who we know are working hard on the permit. We would still like to make sure you are personally aware of our views.

We at WSDOT are committed to working with Ecology on stormwater investments and programs to achieve improved water quality outcomes in ways that will encourage strong funding support from the legislative transportation committees and broad endorsement from the public. We believe that in order to do this within the framework of the NPDES stormwater permit program, WSDOT's permit must be tailored in a few specific respects to the unique challenges of stormwater management and control for transportation facilities.

WSDOT, therefore, has been committed to developing with Ecology in tandem with the new permit a Stormwater Management Program Plan. In March 2003, WSDOT submitted its NPDES permit application voluntarily exceeding the regulatory Clean Water Act minimum coverage for Phase I and Phase II facilities and proposing statewide coverage for the permit.

Later we learned that Ecology thought it would not be able to develop a permit that would be integrated with such a Stormwater Management Program Plan. This made statewide coverage for the WSDOT NPDES stormwater permit an unworkable approach. There would be no regulatory tool such as the plan that WSDOT and Ecology could use to mitigate and adjust the features of Department of Ecology stormwater manuals that are unsuitable for application to many kinds of transportation facilities.

After considerable deliberation, WSDOT in August 2005 then withdrew its application for a permit with statewide coverage and submitted an amended application for facilities governed by the Phase I and Phase II requirements of the NPDES stormwater permit program. We were surprised when Ecology staff informed WSDOT, however, that the preliminary draft permit would nevertheless be issued with statewide coverage.

This breakdown in recognizing that the original WSDOT application in 2003 was tied to the integrated development of the permit and the Stormwater Management Program Plan has now left the agencies in an awkward position. We believe the approach of preparing together the permit and the Stormwater Management Program Plan had been agreed to by

both agencies with the intention that the plan would form the basis for the permit. WSDOT actually submitted a draft of the plan in January 2005, basing the work on a permit content outline provided to WSDOT by the Department of Ecology. Regrettably, since January no comments have been offered by Ecology on the plan and, instead of drawing on the plan as the foundation for the preliminary draft permit, the drafters seem to have based the preliminary draft permit mostly on boilerplate prepared by Ecology for ordinary municipal permits that differ substantially in their context from state transportation facilities. This leaves the preliminary draft permit replete with approaches that contradict the proposed direction of the Stormwater Program Management Plan. It misses many opportunities to deal with specific, widely acknowledged and broadly shared concerns about how the municipal permit boilerplate can be applied to transportation facilities like highways, especially in the areas of flow control, enhanced treatment, and oil control requirements. These features of the preliminary draft permit, if unaddressed, could unnecessarily threaten the ability of Ecology and WSDOT to join in advocating for the aggressive implementation of improved and cost-effective stormwater control benefits in the transportation arena.

Our enclosed comments offer many recommendations for the preliminary draft permit that we believe will satisfy regulatory requirements and better suit our mutual need for a cost-effective, common sense program to achieve significant water quality protections and improvements. Some key areas of concern are requirements in the areas of operation and maintenance; mapping and inventorying; monitoring; coordination with other permit holders; and accounting requirements. Their significant costs will, we think, little improve water quality and greatly detract from funding for stormwater control activities having much greater payoffs in environmental benefit.

Given the strong collaborative record now being compiled in our agencies' joint and respective commitments to environmental protection, it is important, we believe, to see if the stormwater NPDES permit process could be put back on the course of integration between the permit and the good work that can be done in the Stormwater Program Management Plan. We appreciate the efforts made by the Department of Ecology to further the goals of the Clean Water Act and we believe many opportunities continue to exist for us to work together in that direction. We do, however, have to recognize the significant setback that the inability to build the best possible permit could have on our efforts. Thank you, and can Megan and I please arrange to talk with you soon?

Sincerely,

Douglas B. MacDonald
Secretary of Transportation

Enclosure

cc: Dave Peeler, Ecology WQP
Nancy Winters, Ecology WQP
Bill Moore, Ecology WQP
Szvetcz, Annie, Ecology WQP